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Report of the Working Group of Experts on People of African Descent on its mission to Spain

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to Spain from 19 to 26 February 2018. In the report, the Working Group presents the current legal, institutional and policy framework and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in Spain, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to Spain*

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* Circulated in the language of submission and in Spanish only.

I. Introduction

1. At the invitation of the Government of Spain, the Working Group of Experts on People of African Descent undertook a visit to Spain from 19 to 26 February 2018. The members of the delegation were Sabelo Gumedze (Chair), Marie-Evelyne Petrus-Barry and Ricardo A. Sunga III (members of the Working Group).

2. During the visit, the Working Group assessed the human rights situation of people of African descent living in Spain and gathered information on the forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance they face. The Working Group studied the official measures taken and mechanisms intended to prevent structural racial discrimination and protect victims of racism, as well as responses to multiple forms of discrimination according to the concept of intersectionality. The Working Group visited Madrid, Barcelona, Almería and Ceuta.

3. The Working Group met representatives of several central government ministries in Madrid, including the Ministries of Foreign Affairs and Cooperation; the Presidency; Justice; Health, Social Services and Equality; Employment and Social Security; Education Culture and Sport; the Spanish Agency for International Cooperation and Development and the National Institute of Statistics. The Working Group also met with the Vice-President and senior officials of the Supreme Court and with members of the parliament (the Congress of Deputies). It met with officials of the Office of the Spanish Ombudsman, the Prosecutor and the national coordinator against hate crimes and discrimination. It also met with officials of the various law enforcement agencies including the Guardia Civil, the Auditor of the Inspection of Personnel and Security Services, and the border enforcement agencies.

4. The Working Group met with local government authorities in Barcelona and the regional police force Mossos d'Esquadra. It also met with officials of the Ombudsman of Catalonia, the prosecutor of hate crimes in Barcelona and the Barcelona City Council Office of Non-discrimination. In Almería, the Working Group met with local authorities, including law enforcement authorities. It also visited the temporary migrant reception centre in Ceuta and the Aluche immigration detention centre in Madrid. In each of the cities that the Working Group visited, it also met a considerable number of Spanish citizens of African descent, as well as human rights activists, lawyers, academics and representatives of non-governmental organizations.

5. The Working Group thanks the Government of Spain for its invitation and the authorities in Madrid, Barcelona, Almería and Ceuta for their support and cooperation during the visit. In particular, the Working Group thanks the Ministry of Foreign Affairs and Cooperation. The Working Group also extends its thanks to the United Nations agencies in Madrid for their support for the visit. The Working Group would also like to express its appreciation to the civil society steering committee led by Movimiento por la Paz for coordinating meetings with civil society representatives in various parts of the country, and appreciates the feedback it received from everyone who shared their views on the human rights situation of people of African descent in the country.

II. Background: historical overview

6. The Spanish territory comprises nearly five sixths of the Iberian Peninsula and includes the Balearic and Canary Islands and the two autonomous cities of Ceuta and Melilla, the latter two of which are on the Mediterranean coast of Africa. Spanish identity especially has been forged on the frontlines of African and European interaction.[1] In the fifteenth century, slaves arrived in the peninsula through the slave markets of Barcelona,

[1] See Antumi Toasije, "The Africanity of Spain: identity and problematization", *Journal of Black Studies*, vol. 39, No. 3 (January 2009).

Valencia and the Balearics.[2] Historians who studied slavery in Spain thus concluded that Renaissance and perhaps even early-modern Spain might have had the largest African population in Europe.[3]

7. In 1518, the Government of Spain introduced a licence to supply the new colonies with slave labour. In the Spanish Caribbean, the rapidly declining population of Amerindians led Spanish colonists to look to Africa for labourers to manage the economic enterprises of plantations and mines long before the 1540s.[4] Overall, more enslaved Africans permanently entered the Spanish Americas than the whole British Caribbean, making Spanish America the most important political entity in the Americas after Brazil to receive enslaved Africans. It is believed that as many as 1.5 million enslaved Africans arrived in the Spanish Americas directly from Africa between 1520 and 1867 and further estimated that an additional 566,000 enslaved Africans were disembarked in Spanish America from other European colonies in the New World, such as Jamaica and Brazil.[5]

8. Among the more recent arrivals of people of African descent in Spain, the first group of migrants into Spain before the 1980s mostly came from Equatorial Guinea, an African territory occupied by Spain until 1968.[6] A second group, accounting for the majority of black Africans in Spain today, have arrived since the middle of the 1980s, the majority from West Africa (Senegal, Gambia, Cabo Verde and Mali), and since the 1990s, from Nigeria and Central Africa (Cameroon and the Democratic Republic of the Congo) and Equatorial Guinea.[7]

9. According to the National Statistics Institute, as at 1 July 2017, the population of Spain was estimated at 46,549,045, of which 4,464,997 were non-Spanish citizens. Staff of the Institute informed the Working Group that it did not solicit information based on ethnicity and race, but had information on nationality and country of birth. There being no official data on the population of people of African descent, various estimates reported by civil society were that the population of people of African descent could be anywhere between 1 and 2 million.

III. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

10. Spain has ratified all the major international human rights treaties, with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

11. The protection of human rights and the prohibition of racial discrimination are enshrined in the Constitution. Article 14 of the Constitution states that "Spaniards shall be equal before the law, without discrimination of any kind based on birth, race, sex, religion, opinion or any other personal or social condition or circumstance." Protection is also guaranteed under article 23 of the Organic Act No. 4/2000, which defines discrimination as any act that, directly or indirectly, involves any distinction, exclusion, restriction or

[2] See Tamar Herzog, "How did early-modern slaves in Spain disappear? The antecedents", *Republics of Letters: a Journal for the Study of Knowledge, Politics, and the Arts*, vol. 3, No. 1 (September 2012).

[3] See Aurelia Martin-Casares and Marga G. Barranco, "The musical legacy of black Africans in Spain: a review of our sources", *Anthropological Notebooks*, vol. 15, No. 2 (2009).

[4] See "African labourers for a new empire: Iberia, slavery, and the Atlantic world", online exhibition hosted by the Lowcountry Digital History Initiative, College of Charleston, South Carolina.

[5] See Alex Borucki, David Eltis and David Wheat, "Atlantic history and the slave trade to Spanish America: *American Historical Review*, vol. 120, No. 2 (April 2015). See also the Trans-Atlantic Slave Trade Database, Emory University, Atlanta, Georgia.

[6] See Antumi Toasije, "The Africanity of Spain: identity and problematization".

[7] Ibid.

preference directed against a foreigner on the basis of race, colour, descent, national or ethnic origin or religious beliefs and practices, and whose purpose or effect is to vitiate or curtail the recognition or equal exercise of human rights and fundamental freedoms in the political, economic, social and cultural spheres. Article 24 of the Act states that judicial protection against any discriminatory practice that violates fundamental rights and freedoms can be sought through the procedure provided for in article 53, paragraph 2, of the Constitution, as provided for by law. Article 54 of the Act, regarding very serious violations, stipulates that discriminatory behaviour on racial, ethnic, national or religious grounds, as set out in article 23, is a very serious violation, where it does not constitute an offence. A significant milestone in the legal framework is Act No. 62/2003 on taxes and administrative and social measures to effectively implement the principle of equal treatment and non-discrimination, particularly based on race or ethnicity, among other circumstances, both in the public and private sectors. Act No. 19/2007 has been approved to combat violence, racism, xenophobia and intolerance in sport and is aimed at preventing, controlling and penalizing any violent manifestation with racist, xenophobic or intolerant connotations in any sporting activity. The Government keeps a record of any infractions in that connection.[8]

12. Article 510.1 (a) of the Criminal Code penalizes public incitement to violence, hatred or discrimination. Racist insults, defamation and threats are punishable under the general norms on defamation, insults and threats in combination with article 22.4 of the Criminal Code on aggravating circumstances. In addition, article 170 of the Criminal Code provides for increased penalties if threats are intended to frighten members of a population, ethnic, cultural or religious group, or social or professional group or any other group of people. Article 607 of the Criminal Code criminalizes and constitutes an aggravating circumstance to commit an offence on the grounds of racism, anti-Semitism, religion or beliefs of the victim, or his/her ethnicity, citizenship, gender, sexual orientation or gender identity. The Criminal Code also provides for higher penalties if the act is committed via the Internet or if it is likely to disturb the public peace or create a serious sense of insecurity or fear among the members of a vulnerable group. The Working Group notes that there have been significant efforts made towards reviewing the existing laws and institutional measures. At the same time, the Working Group was informed that a 2011 bill on new anti-discrimination legislation had not been enacted.

B. Institutional and policy measures

13. The comprehensive strategy against racism, racial discrimination, xenophobia and other related intolerance (2011) and the framework protocol for the protection of victims of trafficking (2011) are important policy documents which provide the institutional framework for measures to combat racism, racial discrimination, xenophobia and related intolerance. The establishment of a number of institutions at the national, provincial and local levels including the Council for the Elimination of Racial or Ethnic Discrimination, specialized offices dealing with hate crimes and discrimination in all provincial prosecutorial offices in Spain, the Spanish Observatory on Racism and Xenophobia, are also important initiatives for combating racial discrimination. The Working Group welcomes in particular the establishment of hate crimes specialist units within all the offices of all provincial public prosecutors and the appointment of a special prosecutor to oversee the coordination of anti-discrimination activities at the national level. The Working Group, however, notes with concern that despite the earlier functioning of Council for the Elimination of Racial or Ethnic Discrimination, it does not have an infrastructure of its own and has ceased almost all its activities.[9]

14. The Working Group welcomes the initiatives being undertaken by the Observatory on Racism and Xenophobia, including training programmes for educators and school managers, health professionals and law enforcement officials, as well as initiatives to

[8] See www.interior.gob.es/web/archivos-y-documentacion/violencia-en-el-deporte2.

[9] See European Commission against Racism and Intolerance, report on Spain (fifth monitoring cycle, February 2018).

enhance interministerial cooperation on collecting information on hate crimes and combating hate speech. The Working Group also welcomes efforts to reach out to civil society, including through the provision of funding.

15. The Ombudsman is an independent national human rights institution. It is accredited under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) with "A" status. The Office of the Ombudsman monitors the activities of the administration and public authorities in the protection of human rights, reports annually to the parliament and may also submit case reports on matters that are considered particularly serious or urgent or require special attention. In November 2009, the parliament attributed the functions of the national preventive mechanism against torture to the Ombudsman and the Ombudsman therefore undertakes preventive visits to all detention centres in order to detect any torture or ill-treatment. The Working Group was informed of several reports by the Ombudsman recommending that the Government address issues of racism, racial discrimination, xenophobia and related intolerance. The Working Group welcomes in particular the work of the Ombudsman, which has shone a spotlight on racial profiling and recommended government actions.

16. Several initiatives are being undertaken at the national, regional (autonomous communities), provincial and municipal levels to combat racism, racial discrimination, xenophobia and related intolerance. Officials of the Ministry of Interior informed the Working Group that the Ministry had created the national office for the fight against hate crimes in January 2018 and a national register of incidents of hate. It had introduced measures to combat hate crimes in all its training curricula, set up a hotline and a website to report on any act of discrimination or perceived hate crime perpetrated by the state security forces and corps including the National Police and the Guardia Civil and carried out capacity-building activities on hate crimes for several thousand police officers.[10] It also reported on awareness-raising activities undertaken with civil society, social media campaigns and a directive plan to improve daily coexistence and security in schools. Between 2013 and 2016, the Ministry of Employment and Social Security had conducted a campaign against discrimination against migrant workers. The Working Group welcomes the adoption of a diversity coexistence plan in the province of Guipúzcoa, which integrates the principle of non-discrimination within regional policies, with a focus on discrimination based on the origin of persons or their ethnicity, while also taking into account cross-cutting issues such as gender equality or the needs of specific vulnerable groups, as well as multiple and intersectional forms of discrimination. The Working Group also welcomes the creation of a police unit focusing on diversity and hate crimes in Madrid. The diversity management unit of the municipal police of Madrid was created in 2016 and currently has 32 agents specialized in such issues. The Working Group also welcomes the revision of the code of ethics of the Catalan police (Mossos d'Esquadra), as well as the work of the Office of the Ombudsman and the Office of Non-Discrimination at the municipal level. The efforts being made to develop protocols to address racial discrimination in Barcelona are also encouraging. Despite the general lack of disaggregated data based on ethnicity or race, the Working Group did find in several instances that such data was available.

17. The Working Group noted the view of the Government that the availability of statistics on race or ethnicity would result in discrimination. Accordingly, statistics on aliens and immigration refer to nationality, but never to ethnic origin or religion, nor are such statistics compiled on Spanish nationals, although information gathered using research methods is available regarding the Spanish Gypsy population (see CERD/C/ESP/21-23, paras. 45–46). In some instances, the Working Group was provided with official data disaggregated on different grounds of discrimination (including ethnic, racial or national origin) but it did not find data specific to people of African descent as a distinct group.

18. While the authorities are aware of the International Decade for People of African Descent at the national level, a national plan of action to promote it has not been developed. At the provincial and municipal level, the Working Group found very little awareness of the

[10] See www.interior.gob.es/es/web/servicios-al-ciudadano/delitos-de-odio/denunciar-un-delito-de-odio.

International Decade. On the other hand, civil society in Spain is knowledgeable about it and stands ready to work with the Government to implement it. The Working Group also welcomes ongoing civil society initiatives to promote the International Decade in Spain.

IV. Manifestations of racial discrimination

A. Criminal justice system, representation, negative stereotypes and the media

Racial profiling

19. The Working Group found that racial profiling of people of African descent is endemic. Time and again, the Working Group heard how people of African descent are constantly assumed to be undocumented immigrants and thus disproportionately stopped in street checks in comparison to people of other ethnicities and in the absence of any security concerns. Being racially profiled is the lived reality of people of African descent. Civil society reported that black people run the risk of being singled out 42 times more often in ports and public transport, simply because of the colour of their skin. That widespread practice not only discriminates against foreigners and Spanish nationals from ethnic minority backgrounds, but also fuels racism, as those who witness such stops presume the victims to be engaged in criminal activities.

20. The national Ombudsperson and the Ombudsperson of Catalonia have also made recommendations to end racial profiling, in addition to the judgment of the Human Rights Committee in the case of *Rosalind Williams Lecraft v. Spain*.[11] The Working Group notes that the general principles of proportionality, equal treatment and non-discrimination in respect of identity checks have been included in the Law on the Security of Citizens. However, Spanish legislation still lacks a specific prohibition of racial profiling and the existing criteria for law enforcement agents to conduct identity checks remain insufficient. In fact, the Working Group received numerous testimonies attesting that identity checks based on racial profiling had continued since the Law on the Security of Citizens entered into force.

21. While appreciating that article 22.4 of the Penal Code establishes racial motivation as an aggravating circumstance, the Working Group is particularly concerned at the effects of the Law on the Security of Citizens on the rights of persons of African descent. The deterrent provisions of the Law that impose large fines for filming law enforcement agents and reversing the burden of proof, have reportedly pushed people into self-censorship, resulting in underreporting of discriminatory acts, failure to investigate and prosecute perpetrators and provide redress to victims.

22. Racial discrimination pervades all spheres in society from schools to the labour market; from housing to health and other social services. Representatives of civil society described a general lack of knowledge of the protection measures available for people of African descent. They also reported the difficulties affected people had in reporting incidents of discrimination owing to perceived mistrust and fear of the law enforcement authorities. They reported an increase in manifestations of racism, racial discrimination, xenophobia and related intolerance towards people of African descent associated with the economic crisis, increased migration and refugees, and antiterrorism measures. Civil society also reported that the lack of disaggregated data on the administration of justice meant that it was not possible to ascertain the number of cases processed for criminal offences with racial discrimination as an aggravating factor.

23. The Working Group welcomes the civil society initiative launched by organizations based in Madrid, Barcelona, Valencia, Almería and Murcia, on the occasion of the International Day for the Elimination of Racial Discrimination on 21 March, urging the

[11] See Committee on Human Rights, communication No. 1493/2006, paras. 7.2, 8 and 9.

Government to end police identification checks allegedly based on racial profiling. The call was made through a letter addressed to the Minister of the Interior.

Lack of representation

24. The Working Group found that lack of representation of people of African descent was endemic at State, regional and municipality levels, as well as in all three branches of power. The Working Group did not meet a single person of African descent in its extensive meetings with the authorities. The only exception was a meeting with the one member of the national parliament who is of African descent, which confirmed how marginal representation of people of African descent remains in the legislature. That is in sharp contrast to reports that persons of African descent in Spain represent up to 2 million people based on different estimates reported by civil society.

25. While the authorities explained that this was a result of the demographics of "recent migration from Africa" and the requirement to have Spanish citizenship to enter the civil service, the Working Group notes with concern that in the light of a substantial number of people of North African ancestry in Spain and the migration flux that has intensified since the 1990s, the underrepresentation may be attributed to racial bias and may perpetuate stereotypes of people of African descent as migrants and not as valuable contributors to Spanish society. In that connection, the lack of representation of people of African descent in the police is of particular concern, given widespread racial profiling, and represents a risk of exacerbated tensions between the police and communities.

Stereotyping

26. The authorities unanimously praised the exemplary integration of people of African descent and justified the lack of specific action "because there is no specific problem". The Working Group warns that such a position may result in an adverse effect and may lead to the invisibility of people of African descent and denial of an existing bias against them. Civil society reported several instances of racist portrayal of people of African descent in the media, particularly in the context of the influx of migrants, and in some advertisements in the mass media. Representatives of communities of African descent reported to the Working Group that lack of representation, coupled with an absence of positive references or role models in the media and in cultural activities lead to further invisibility.

27. The Working Group was told about Spanish festivities using the blackface. For representatives of civil society and people of African descent who met with the Working Group, such events were considered offensive and insulting and caricatured people of African descent in a dehumanizing way. In Catalonia and in Alcoy in Alicante province, the Working Group was told about the depiction of a black face in the Cabalgata de los Reyes Magos (Cavalcade of the Magi) and the depiction of giants with black faces built in wood in the city of Tarragona during the festival of Santa Tecla.

28. The Working Group collected numerous testimonies that women of African descent were being associated with sex workers, which lead to harassment and multiple forms of discrimination.

Migrants and asylum seekers

29. The Working Group recognizes the efforts made by Spain in relation to the migrant crisis and rescue operations at sea that have saved numerous lives. In particular, it welcomes the efforts of the new administration in rescuing more than 600 migrants and refugees of African descent aboard the *Aquarius* in Valencia on 17 June 2018.

30. However, the Working Group is concerned at the differing approach to asylum between the mainland and Ceuta and Melilla, which undermines the international protection of people of African descent. It is of particular concern that the asylum seekers are unable to reach the Spanish border because of the overzealous attitude of the Moroccan authorities. The authorities in Ceuta admitted that the Moroccan police do their work in such a manner that migrants do not reach the territory of Spain.

31. Sea arrivals to the Andalusian coast, many coming from sub-Saharan African countries, while usually being given access to the territory, are regularly detained under the irregular migration legal framework. There is no mechanism in place to identify their protection needs, refer them to the asylum channel, or prevent their detention. The practice of regularly detaining sea arrivals who state from the outset their intention to apply for protection, acts as a deterrent to claiming asylum and is in contradiction to the asylum legislation.

32. Spain is currently appealing the judgment of the European Court of Human Rights issued on 3 October 2017, in which Spain was accused of pushbacks or collective expulsions.[12] The Working Group notes the urgent need to modify the working criteria of the agents in charge of border control in Ceuta and Melilla, so that they can hand over to the national police those persons who try to gain access to Spanish territory to carry out the procedures established by immigration regulations and can inform interested parties about the possibility of requesting international protection.

Safeguards and conditions of detention

33. The Working Group notes that in accordance with article 62 bis 1 of Organic Law 2/2009, immigration detention centres do not have prison statu. However, the Working Group observed that the centres it visited functioned in practice as prisons.

34. While commending the State for reducing the maximum length of detention in immigration detention centres to 60 days, the Working Group notes with concern that immigration detention, which is a form of administrative detention (i.e. the individual has not committed a criminal offence), continues to be commonly used. The Working Group stresses that mandatory detention of groups of persons without an adequate assessment having been undertaken of the necessity and proportionality of detention in each individual case must be avoided.

35. Taking into account the well-documented suffering of people of African descent during their journey to Europe and pre-existing violations of their rights, any form of detention has a deleterious effect on the mental health of people of African descent, in particular in the case of minors and victims of trafficking, sexual gender-based violence or torture.

36. The Working Group found that migrants detained in the immigration detention centre in Aluche fell broadly into three categories: (a) individuals who had been convicted of a criminal offence, who had served a custodial sentence and were to be deported; (b) migrants in an irregular situation who had been identified during spot checks; (c) migrants in an irregular situation who had been rescued at sea and transferred to the centre for expulsion. As regards the first category of detainees, the Working Group was concerned to learn that during the day, individuals who had been sentenced to prison terms mixed with other categories of migrants.

37. Of serious concern to the Working Group is that the majority of women of African descent are trafficked for sex work in Spain and the rest of Europe. At the temporary migrant reception centre in Ceuta, the Working Group noted with concern that pregnant women and women with small children were facing difficulties in accessing basic needs. The Working Group was informed of the existence of micronetworks that are involved in human trafficking. Women who are expelled from European countries are most likely to be retrafficked to Europe. The Working Group is also seriously concerned about the large number of unaccompanied children of African descent who are subject to age assessment tests, which are not considered accurate, and which in most cases leaves them with gaps in their protection.

38. In terms of persons of African descent in prison, while statistics are not officially collected by the national statistical office, the Working Group was informed that about 25 per cent of all persons in prison in Spain were foreigners. However, the lack of specific data

[12] See European Court of Human Rights, *N.D. and N.T. v. Spain*, Applications Nos. 8675/15 and 8697/15, Judgment, 3 October 2017.

means that persons of African descent are invisible and are possibly discriminated against in the administration of justice.

Child migrants

39. On a positive note, the Working Group noted that children or families with children were not detained in immigration detention centres, although it received an allegation that in the Aluche centre children were being detained while their age was determined.

Hate crimes

40. The Working Group received numerous and corroborated testimonies of acts of violence motivated by hate and/or racism. According to NGO sources, the number of acts of aggression motivated by racism is estimated to be between 4,000 and 6,500 cases per year. Those unofficial figures confirm the broad perception of persons of African descent whom the Working Group interviewed that there is a vast gap between equality in law and in practice.

B. Disparities in access to education, health, housing and employment

41. The Working Group noted deficiencies in the enjoyment by people of African descent in Spain of their economic, social and cultural rights. It learned of the considerable challenges they face, such as a lack of job opportunities and inadequate access to quality health care, social security and secondary or tertiary education. According to joint research carried out by the European Union and the Ministry of Health, Social Services and Equality on discrimination, the Spanish population as a whole perceives inequalities to exist in access to public services (in 54 per cent of cases), in access to rented accommodation (75 per cent) and in recruitment to both non-managerial (78 per cent) and managerial (74 per cent) positions. It is essentially in the private field (housing rental, access to employment and access to non-managerial and managerial positions) that the greatest inequalities of opportunity are perceived to exist. Such discrimination, according to public opinion, is mainly on the grounds of ethnic or racial origin.[13] In the absence of disaggregated data, it is not possible to implement specific measures to address the deficit in the enjoyment by people of African descent of their economic, social and cultural rights.

42. Despite some coverage at the secondary and tertiary levels of education, the Working Group is concerned that the curriculum does not adequately reflect the history of colonization, or of the transatlantic trade in enslaved Africans, enslavement and the history and contributions of people of African descent in Spain. Civil society reported that although many schools were trying to address those issues through campaigns such as "cooperative learning", "value diversity" or "child-centred curriculum" that are inserted into existing materials, it is difficult for a teacher, new to a multicultural classroom to address issues of racism and racial discrimination effectively, or counter racial stereotypes, along with an adequate knowledge of the history of people of African descent. The Working Group was informed that in Catalonia there existed a "protocol of action against a serious conflict with students" which included hateful behaviour and discrimination based on ethnicity, race and/or national origin. However, civil society reported that it was rarely applied in schools owing to the lack of training of educational agents coupled with the systematic denial of racism.

43. The Working Group noted that the National Museum of Anthropology had hosted some exhibitions in relation to the history of people of African descent, which were supported by the General Subdirectorate for the Promotion of Fine Arts of the Ministry of Culture. At the same time, civil society reported a lack of programmes of cooperation and artistic creation focused specifically on the subject of people of African descent, as was currently being done with Latin American countries and subjects. The Working Group was also informed of de facto segregation in schools, with disproportionately higher dropout

[13] Ministry of Health, Social Services and Equality, "Mapping and profiling discrimination in Spain" (December 2014).

rates being seen in schools attended by children of African descent and other minority groups.

44. The Working Group was informed of the amendments introduced through Royal Decree-Law No. 16/2012 that curtails the right of undocumented migrants to gain access to public health services. In the wake of that decision, some autonomous communities have continued to provide universal access to health assistance. In June 2017, the Catalan parliament passed a law ensuring basic health assistance for all citizens in Catalonia, including undocumented migrants. Civil society reported that the Royal Decree-Law which revoked their previous full right to public health-care coverage had led to the deterioration of health management, including a situation of disinformation, neglect and confusion, not only in the general population, but in the health, administrative and social services. Further, civil society organizations had observed a deterioration in medical care, including disruption to the adequate follow-up of chronic and serious ailments, and the loss of effective prevention programmes. Women who did not have a health card and had become victims of gender-based violence and trafficking were particularly vulnerable, owing to the restrictions in the provision of health care and these included significant numbers of women of African descent. The Government reported that there were exceptions to this, in the case of undocumented migrants, with medical care available for pregnant women, victims of gender-based violence, minors under the age of 18, all victims of trafficking, people applying for international protection and for everyone in the case of a medical emergency.

45. Civil society reported that people of African descent were discriminated against in recruitment processes, sometimes very openly. They explained that even educated people of African descent did not have access to jobs at the same level as other Spanish nationals, even if they had similar educational qualification, because of the colour of their skin. The Working Group is concerned about the widespread exploitation of migrants, including people of African descent, who face racial discrimination and exploitation in the workplace. Employers of immigrants do not respect labour laws in terms of working conditions and payment of the minimum wage. Workers in the informal sector of the economy, such as street vendors, find themselves in a particularly vulnerable situation, with no social security or rights, and also experience harassment by law enforcement officials. Regardless of their levels of education, they do not have access to skilled jobs because of discrimination. Precarious contracts also make it impossible to apply for resident status.

46. The Working Group is seriously concerned about the plight of migrant workers who live in appalling conditions in Spain, particularly in Almería. Besides rampant wage exploitation, the Working Group heard accounts from migrant workers living in shacks made of old boxes and plastic sheeting, without sanitation or access to drinking water. The Working Group learned that migrants also faced structural racial discrimination in housing and social services where they lived, with limited access to water and electricity and infrequent garbage collection, which they also attributed to structural discrimination. Migrant workers also complained that they were periodically subjected to harassment, extortion and beatings at the hands of the Guardia Civil, allegedly in collusion with the employers.

C. Multiple forms of discrimination

47. The Working Group learned that people of African descent in Spain often faced inequalities and multiple forms of discrimination on the grounds of their race, colour, gender, sexual orientation and religious beliefs. Domestic workers, who are predominantly women, are invisible and subjected to long hours of work with no safeguards against abuse. Of particular concern to the Working Group were reports of children of African descent being taken away from their parents by social services.

48. Racial and gender stereotypes intersect and interact simultaneously to deny victims their basic rights to comprehensive protection and access to justice. Civil society reported that women of African descent in particular were subjected to racial stereotypes of being involved in prostitution and, as a result, faced separation from their families. The authorities allegedly consider that children of African descent are at risk because their

mothers are victims or presumed victims of trafficking. Instead of looking for solutions that protect the family unit from the violence of trafficking networks, they have instead sought to separate children from their parents, which undermines their right to family life.

V. Conclusions and recommendations

A. Conclusions

49. **The Working Group is concerned about the human rights situation of people of African descent in Spain, who experience racism and racial discrimination. There exist major gaps between law and practice in protecting people of African descent from racism, racial discrimination, xenophobia, Afrophobia and related intolerance. Joint research carried out by the European Union and the Ministry of Health, Social Services and Equality research indicated that the vast majority (82.4 per cent) of the people surveyed believed that "application of the law differs according to whom it is applied".**[14]

50. **Deeply ingrained in the official discourse is the belief that racial discrimination is mostly experienced by non-Spanish migrants and refugees of African descent, and that there is no structural and institutional racial discrimination against Spanish citizens of African descent. Civil society reported that people of African descent were invisible and the laws did not offer any protection from the racism they faced every day. Despite some important progress being made in terms of the review of the Criminal Code and institutional measures to combat hate crimes, some important deficits remain. The development of a global action plan, the strengthening of legislation and the enforcement of both could result in further advances in Spain in combating racism, racial discrimination, xenophobia, Afrophobia and related intolerance.**

51. **The Working Group notes with the utmost concern the absence of disaggregated data based on ethnicity or race. In reality, it leads to the invisibility of the community of persons of African descent and prevents racism, racial discrimination and social exclusion from being effectively addressed. Data disaggregated by ethnicity is vital in understanding the severity and scope of racial discrimination against people of African descent and in developing targeted and holistic responses.**

52. **The Working Group is concerned by the lack of representation of people of African descent at all State, regional and municipality levels, as well as in the judiciary and the legislatures. While the authorities explained that this was due to the demographics of recent migration from Africa and the requirement to be of Spanish citizenship, the Working Group is concerned that the underrepresentation may be attributed to racial bias and continue to perpetuate stereotypes of people of African descent as migrants and not as contributors to Spanish society. Lack of representation of people of African descent in the police force may tend to strengthen tensions between the police and communities. The Working Group found that people of African descent were also largely unrepresented in the media and education sectors, among others.**

53. **The Working Group recognizes the efforts made by Spain in relation to the migrant crisis and the rescue operations at sea that have saved numerous lives. At the same time, differing approaches to asylum between the mainland and Ceuta and Melilla undermine the international protection of people of African descent. Arrivals on the Andalusian coast, many coming from sub-Saharan African countries, while usually being given access to the territory of Spain, are regularly detained under an irregular migration legal framework. There is no mechanism in place to identify their protection needs, refer them to the asylum channel or prevent their detention. The**

[14] Ibid.

practice of regularly detaining arrivals by sea who state from the outset their intention to apply for protection, acts as a deterrent to claiming asylum and is in contradiction with the asylum legislation.

54. The Working Group notes with concern the collective expulsions and number of pushbacks at the borders of Spain in Ceuta and Melilla. It notes the ongoing appeal process, further to the judgment of the European Court of Human Rights issued on 3 October 2017, in which Spain was condemned for pushbacks or collective expulsions. The Working Group further notes the urgency to modify the working criteria of the agents in charge of border control in Ceuta and Melilla, so that they can hand over to the National Police those persons who try to access Spanish territory to carry out the procedures established by immigration regulations and can inform interested parties of the possibility of requesting international protection.

55. While commending the State for reducing the maximum length of detention in immigration detention centres to 60 days, the Working Group notes with concern that immigration detention, which is a form of administrative detention (i.e. the individual has not committed a criminal offence), continues to be commonly used. Taking into account the well-documented suffering of people of African descent during the journey to Europe and multiple violations of their rights, subsequent detention has a deleterious effect on the mental health of a person of African descent. On a positive note, the Working Group notes that children or families with children are not detained in immigration detention centres, although it received an allegation that in the Aluche detention centre children were being detained while their age was determined. Immigration detention of children is never in the best interests of a child and always constitutes a violation of the rights of the child.

56. The following recommendations are intended to assist Spain in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance.

B. Recommendations

57. The Government of Spain should consider adopting a comprehensive law against racism, racial discrimination, xenophobia and related intolerance, including measures aimed at preventing acts of racism. The Working Group notes that in February 2017 the Socialist Party submitted a proposal to the parliament for just such a comprehensive law. The Government should also consider adopting a comprehensive law against hate crimes, providing for comprehensive legal, psychological, social and economic assistance and adequate protection, information and restitution.

58. Legislative reforms affecting people of African descent should be undertaken in consultation with and the involvement of the civil society representing them.

59. The Working Group strongly recommends that the Government collect, compile, analyse, disseminate and publish reliable statistical data, disaggregated along ethnic lines on the basis of voluntary self-identification, and undertake all necessary measures to regularly assess the situation of individuals and groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance.

60. The Government should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

61. The Working Group urges the Government to comply with the recommendations made by the Office of the National Ombudsperson, including those relating to combating racism, racial discrimination, xenophobia and related intolerance.

62. On the subject of racial profiling, the Working Group recommends that the Government:

(a) Put in place a specific and independent complaints mechanism to address the issue;

(b) Implement the recommendations of the National Ombudsperson to end racial profiling and move towards a more nuanced official discourse on racial profiling;

(c) Conduct specialized training of police officers and public officials to prohibit and punish racial profiling;

(d) Carry out specific awareness campaigns to change the stereotypes of people of African descent.

63. **The Working Group recommends measures to increase the representation of people of African descent at all levels in the public administration (including in the Observatory on Racism and Xenophobia and specific entities already established to combat racist hate crimes), the judiciary, the prosecution services and law enforcement, and other sectors, including education and the media among others. Overcoming structural discrimination and unconscious bias will also require positive measures, in accordance with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.**

64. **The Working Group urges the Government to put an end to all forms of collective expulsions and pushbacks of asylum seekers and migrants. The Spanish authorities must respect the right of non-refoulement and the right of access to identification procedures. The summary returns should be carried out with a prior evaluation of the risk of return that allows access to the procedures for determining refugee status, since the pushbacks are contrary to the principle of non-refoulement.**

65. **The Government of Spain should facilitate the relevant procedures for identification and referral of persons in need of international protection at border posts, including their safe access to the territories of Ceuta and Melilla.**

66. **The Working Group recommends that the Spanish authorities adopt measures to shorten the delay in processing asylum requests. People of African descent should have access to procedural safeguards to challenge their detention and the Working Group recommends the introduction of alternatives to the detention of migrants and a scaling down of immigration detention facilities, which should be resorted to only when necessary and proportionate.**

67. **The Working Group recommends that the Aliens Law be reviewed, with a view to making it more respectful of the rights of asylum seekers and migrants. The overly long period of 10 years to qualify for citizenship could be shortened. Pathways to citizenship for migrants, including those in an irregular situation, should be created and strengthened.**

68. **The Government should introduce measures to include more people of African descent among officials at the centres of administrative detention for foreigners subject to deportation proceedings, administrative officials involved in refugee status determination and officials at ports, as well as all others involved in the expulsion process.**

69. **The State must develop a comprehensive human rights approach to dealing with the trafficking of people of African descent. Women who are victims of trafficking must be identified and accorded international protection in Spain. There is a need for specialized training of the border police, asylum officials and all civil servants, as well as interpreters, social workers, lawyers and the judicial authorities dealing with potential victims of trafficking.**

70. **The Government should as a matter of priority facilitate language and interpretation services in the immigration detention centres and temporary migrant reception centres corresponding to the language spoken by those arriving in Spain. Asylum seekers experience language difficulties that limit their understanding of their rights and the services offered to them by the Spanish authorities. Centres in Ceuta**

and Melilla should have the same standards in language and training courses as asylum seekers are entitled to and receive on the mainland.

71. **The Government should seriously consider eliminating all forms of detention for migrants and asylum seekers. Pathways to work permits, residency and citizenship should be created. Furthermore, Spain should shape its foreign relations with Morocco and other States towards an international consensus to end pushbacks of migrants and asylum seekers.**

72. **The Government should periodically review textbooks and other educational materials to ensure that they reflect historical facts accurately as they relate to past tragedies and atrocities, such as enslavement, the trade in enslaved Africans and colonialism. The Government should facilitate increased visibility for the history and culture of people of African descent through museums, monuments, visual arts and other means.**

73. **The Working Group recommends the establishment of a cultural institute for people of African descent in Spain, run by people of African descent. People of African descent would thus be able to develop programmes that would add to the richness of cultural diversity in the country. The Government is also encouraged to develop protocols for diversity studies, with role models of African descent at all levels.**

74. **The Government should take all necessary measures to ensure full implementation of the right to an adequate standard of living, including the right to adequate housing. Decent housing facilities, with associated utility services, should be provided to migrants in Almería.**

75. **The Government should address the racial discrimination and de facto segregation in the lack of social services for and exploitation in the labour market of people of African descent, including in Almería. The Government should ensure that there is no discrimination, that there is decent work for all workers and that domestic workers are not at risk of being exploited or abused. Informal work should also be looked into, with a view to solving the issue of street sellers, particularly in relation to minors.**

76. **People of African descent should have access to health care whenever necessary. The provision of universal health coverage and access to the public health system should be assured without any discrimination on any ground, including citizenship and ethnicity. The Government should ensure that health professionals are trained to handle cases of female genital mutilation, bearing in mind the right to privacy of patients. The Government should ensure that migrants and asylum seekers who cannot speak Spanish are assisted in the health-care system.**

77. **The amendments introduced through Royal Decree-Law No. 16/2012 that curtail the right of undocumented migrants to access to public health services as provided in several international human rights instruments ratified by Spain should be reviewed. The Government should ensure that detention centres provide adequate health care, including addressing trauma cases before expulsions.**

78. **In accordance with international human rights law, protection must be given to women of African descent who have been subjected to sexual and gender-based violence. The State must also put in place measures to encourage women to report incidents of sexual and gender-based violence.**

79. **The Working Group recommends that the Government support and facilitate an open debate with regard to the Spanish festivities using blackface and discussions with different groups, including people of African descent, should take place to identify steps that might respond to the views and concerns of all.**

80. **The Working Group reminds the media of their important role as a public watchdog with special responsibility for ensuring that factual and reliable information about people of African descent is reported.**

81. The Working Group urges the Government to involve civil society organizations representing people of African descent in framing important legislation concerning them and to provide those organizations with adequate funding.

82. Noting the international engagement of the Government with countries in the Latin American region, the Working Group encourages the Government to support the implementation of the International Decade for People of African Descent and the implementation of the 2030 Agenda for Sustainable Development within Spain, with a focus on the indicators that are relevant for people of African descent. The Working Group recommends a national discourse on reparatory justice to address past historical injustices. In partnership with civil society, the Spanish authorities should fully implement the programme of activities of the International Decade, along its three themes of recognition, justice and development for people of African descent. The International Decade presents an opportunity to showcase achievements in that regard.

83. The Working Group would like to reiterate its satisfaction at the willingness of the Government to engage in dialogue, cooperation and action to combat racial discrimination. It hopes that its report will support the Government in that process and expresses its willingness to assist in this important endeavour.